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Jasmine Pope

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The Stateless: Millions of People Forgotten and Left Without Adequate Immigration Assistance, Where does the United States fit into the Plight of the Stateless?

Jasmine Pope*

Introduction

What is citizenship? What does it mean to be American, French, Sudanese, Thai, or Bolivian? Is it simply being born in any given country or is it something more than that? These are questions that for many people, they rarely think about on a daily basis, and yet for some, this question plagues every second and every ounce of their being.

On a Sunday afternoon in December, thousands of people watch National Football League games. Prior to the start of every game, the National Anthem is sung. Some fans sing along, some fans stand in silence, some players pray, and others simply remove their hats and place their hand over their hearts. One thing that connects them all, is the proud feeling of being American.

It is a feeling that most take for granted. Every day, people wake up and go about their lives, and don't give much thought, if any at all, to the fact that they are a United States citizen. For millions of people in the world, the sense of pride that comes with being a national of a country is nonexistent because they are without a nationality; they are stateless. Jay Milbrandt noted that "statelessness is an often-overlooked struggle. We take for granted that we have legal identity and officially belong to a nation."¹

* Jasmine Pope graduated from the University of Baltimore School of Law in May of 2018 and was the Editor-in-Chief for the *University of Baltimore Journal of International Law* for the 2017-2018 school year. She graduated from Towson University in 2015. She has previously served as a Student-Attorney at the University of Baltimore School of Law's Immigrant Rights Clinic, and as Secretary and 3L Representative for the International Law Society. She previously competed on the Inter-American Human Rights Moot Court Team. Additionally, she worked as a Law Clerk for the Baltimore City Law Department, Legal Project Intern for Advocates Abroad, and Legal Intern for the Law Office of Hayley Tamburello. Her interests include immigration, humanitarian law, and the law around conflict.

1. Jay Milbrandt, *Stateless*, 20 *CARDOZO J. INT'L & COMP. L.* 75, 76 (2011).

Born on United States Soil yet Alecia is Invisible under the Law

Alecia Faith Pennington was born at her parents' home in Houston, Texas and raised in Kerrville, Texas.² She is one of six children.³ Both of her parents are United States citizens, and while Alecia and all of her siblings were born on United States soil, her parents never registered her birth.⁴ In fact, her parents specifically sought out midwives that would file no birth records.⁵ Because Alecia was homeschooled, never went to the dentist or to see a doctor, she has no school or medical records.⁶ Her parents were conservative, religious, and isolated their family from what they believed were the sins of the world.⁷

Alecia rarely left the farm, with the exception of occasionally going to church.⁸ The only people she knew were her parents, siblings, and grandparents.⁹ Alecia wanted to leave her family farm, eventually doing so, despite her parent's objections.¹⁰ But at the age of nineteen, Alecia didn't know exactly how to act in the real world.¹¹ She wanted to learn how to drive, go to college, get her own apartment, buy her own car, but there was one big problem standing in her way: she didn't have a birth certificate or social security number.¹²

In the United States, the only proof of our citizenship is a birth certificate and social security number. Without these, there is nothing other than our word to prove that we are United States citizens. Alecia tried to apply for a delayed birth certificate, but a Texas judge refused to grant her request because there was no proof that she existed.¹³

2. *The Girl Who Doesn't Exist*, RADIOLAB (Aug. 29, 2016), <http://www.radiolab.org/story/invisible-girl/>.

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

9. *The Girl Who Doesn't Exist*, RADIOLAB (Aug. 29, 2016), <http://www.radiolab.org/story/invisible-girl/>.

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.* (Eventually Alecia was able to obtain a delayed birth certificate, without the help of her parents. She has since learned to drive, obtained a driver's license, and bought a car. However, Alecia is still without a Social Security number, and her attorneys are still fighting in court to get her one. *See also*, "Help Me Prove It," <https://www.facebook.com/Help-Me-Prove-It-882732628415890/>).

Alecia, born on United States soil, to two United States citizens, was stateless under the eyes of the law. She couldn't exercise her right to vote.¹⁴ Alecia could not do things people all too often take for granted (i.e. drive, go to college, rent an apartment).

Statelessness is a crisis that has plagued the international community for decades, and yet most of the world is ignorant to the plight of the stateless person. Hannah Arendt aptly summed up the plight of stateless persons: "their plight is not that they are not equal before the law, but that no law exists for them."¹⁵ Statelessness has been defined numerous times, in various different instruments. The U.S. State Department has defined a stateless person as someone who does not enjoy citizenship, under international law.¹⁶ Simply put, statelessness is the "absence of a legal connection to any state."¹⁷ Some of the causes of statelessness include:

"Failure of hospitals and other places of birth to register newborns properly, lack of financial ability to cover the cost of registration and birth certificates, customs and traditional attitudes about birth registration, birth to stateless parents, political change and transfer of territory, which may alter the nationality status of citizens of the former state(s), administrative oversights, procedural problems, conflicts of law between two countries, or destruction of official records, alteration of nationality during marriage or the dissolution of marriage between couples from different countries, targeted discrimination against minorities, laws restricting acquisition of citizenship, laws restricting the rights of women to pass on their nationality to their own children, laws relating to children born out of wedlock and during transit, and loss or relinquishment of nationality without first acquiring another."¹⁸

Any one of these reasons, alone or in combination with another cause, can result in someone becoming stateless.

14. *The Girl Who Doesn't Exist*, RADIO LAB (Aug. 29, 2016).

15. David C. Baluarte, *Life after Limbo: Stateless Persons in the United States and the Role of International Protection in Achieving a Legal Solution*, 29, GEO. IMMIGR. L. J. 351, 355 (2015).

16. U.S. Department of State, Policy Issues: Statelessness, <http://www.state.gov/j/prm/policyissues/issues/c50242.htm>.

17. Betsy L. Fisher, *The Operation of Law in Statelessness Determinations Under the 1954 Statelessness Convention*, 33 WIS. INT'L L. J. 254, 257 (2015).

18. U.S. Department of State, Policy Issues: Statelessness, <http://www.state.gov/j/prm/policyissues/issues/c50242.htm>.

Unfortunately, there are multiple States that continue the “once dominant practice of extending citizenship on the basis of paternal descent only.”¹⁹ As a result of state succession, statelessness has attracted more international attention.²⁰ There exists a belief within the international community that successor states should extend nationality to those that remain in the new territory.²¹ However, there are many instances in which successor states fail to do so. For example, the Baltic states have refused citizenship to many who are ethnically Russian following the collapse of the U.S.S.R.²² There are also many modern day issues of statelessness, including the situation on the island of Hispaniola and the situation in Myanmar.

In the United States, while not as prevalent an issue as in some other countries, Alecia Pennington is not the only stateless person with the territory of the United States. As such, the United States should have a vested interest in the identifying and protecting stateless persons. The Immigration and Nationality Act is silent on the issue of statelessness. Nowhere in the text can one even find the word “stateless.”

Stateless persons have lived in the shadow of the United States’ immigration system for far too long. Unless a stateless person can seek citizenship through marriage to a United States citizen, through a successful refugee application, or asylum application, they have no viable option to gain citizenship within the United States. The United States must bring the issue of statelessness to the front of the agenda and find viable options of solving the problem.

History and Overview of Statelessness

Following World War II, many believed that stateless “present[ed] a serious vulnerability in efforts to build human rights.”²³ This belief led to the creation of Universal Declaration of Human Rights (*hereinafter* UDHR) in 1948. Article 15 of the UDHR states that “(1) Everyone has the right to a nationality. (2) No one shall be arbitrarily

19. Peter J. Spiro, *NATIONALITY AND STATELESSNESS UNDER INTERNATIONAL LAW*, 110 AM. J. INT’L L. 148, 150 (2016). (The use of “state” in this paper refers to countries, not states within the United States).

20. *Id.*

21. *Id.*

22. *Id.* at 151.

23. *Id.* at 148.

deprived of his nationality nor denied the right to change his nationality.”²⁴

In response to global concern regarding statelessness, the United Nations implemented, first, the 1954 Convention relating to the Status of Stateless Persons (*hereinafter* 1954 Stateless Convention), and then the 1961 Convention on the Reduction of Statelessness (*hereinafter* 1961 Stateless Convention).²⁵ Surprisingly however, both the 1954 and 1961 Stateless Conventions fail to contain language expressing a right to a nationality.²⁶ It is estimated that there are up to twelve million stateless people around the world.²⁷

There are two forms of statelessness: *de jure* statelessness and *de facto* statelessness.²⁸ *De jure* statelessness is “when there is no recognized state to which a person may claim nationality and citizenship.”²⁹ This is usually the case when a state no longer exists and the successor state, or states, fails to offer and/or recognize nationality and citizenship.³⁰ *De facto* statelessness is when a “person possesses a legally meritorious claim for citizenship, but is precluded from asserting it because of practical considerations such as cost, circumstances of civil disorder, or fear of persecution.”³¹ In cases of *de facto* statelessness, “the state is often in existence, but the individual lacks protection of the laws by a mechanical failure of the state.”³² There are three categories of *de facto* statelessness:

“(1) Persons who do not enjoy the rights attaches to their nationality; (2) Persons who are unable to establish their nationality, or who are of undetermined nationality; (3) Persons who, in the context of State succession, are attributed the

24. G.A. Res. 217(III) A, Universal Declaration of Human Rights, art. 15 (Dec. 10, 1948).

25. Spiro, *supra* note 20 at 148.

26. *Id.*

27. Jay Milbrandt, *Adopting the Stateless*, 39 BROOKLYN J. INT’L L. 695, 721 (2014).

28. Milbrandt, *supra* note 2.

29. *Id.*

30. *Id.* (An example of this: after the fall of the U.S.S.R. many states that were created as a result failed to offer nationality and citizenship to ethnic Russians living in their territorial borders).

31. *Id.*

32. *Id.* (Alecia Pennington’s situation is one of *de facto* statelessness. She is a born on United States soil and meets the criteria for *jus soli* citizenship, but due to a failure of her parents to register her birth, she lacks protection from the country in which she was born in.).

nationality of a State other than the State of their habitual residence.”³³

The 1954 Stateless Convention defines a stateless person as “a person who is not considered as a national by any State under the operation of its law.”³⁴ The preamble of the 1954 Stateless Convention states: that States party to it recognize that it is “desirable to regulate and improve the status of stateless persons by an international agreement.”³⁵ This Convention, “establishes an internationally recognized status for the stateless person, and provides her with specific rights on top of the protection to which she is entitled under international human rights law.”³⁶ The Convention looks to standardize the status of stateless people, promote enjoyment of fundamental universal human rights, and to improve the status of stateless people.³⁷

It is important to note that the 1954 Stateless Convention not only speaks to what States party to it agree to and must do, it also speaks to the duty that stateless people have. Article 2 of the 1954 Stateless Convention states that “every stateless person has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order.”³⁸

Statelessness and International Concern

Unfortunately, while the world shifted its focus to the refugee regime, “statelessness essentially disappeared from the global agenda.”³⁹ Spiro notes that part of the reason for statelessness disappearing from the global agenda can be accredited to “a result of institutional path dependence.” Another cause may stem from 1949, in which the United Nations looked at both statelessness and refugees, “a subsequently convened ad hoc committee on statelessness and related problems decided that the two issues should be addressed in separate

33. *Id.*

34. 1954 Convention relating to the Status of Stateless Persons, Article 1.1 (Apr. 26, 1954).

35. *Id.*

36. Matthew Seet, *The Origins of UNHCR’s Global Mandate on Statelessness*, INT’L J. REFUGEE LAW 28 (1): 7.

37. Fisher, *supra* note 18, at 266.

38. 1954 Convention relating to the Status of Stateless Persons, Article 2 (Apr. 26, 1954).

39. Spiro, *supra* note 20, at 149.

conventions.”⁴⁰ As a result, the refugee regime has clear “institutional oversight” through the United Nations High Commissioner for Refugees (*hereinafter* UNHCR), while there is no institutional oversight for statelessness through the UNHCR.⁴¹

The UNHCR is most often criticized for “remain[ing] somewhat indifferent to the fate of the stateless, a problem which should rather inspire human terms the same compassion as that shown to refugees.”⁴² It is important to note that the UNHCR “attempted to engage states on statelessness issues during the Cold War: it sought to standardize the travel document for stateless persons, and promoted accessions to the two statelessness Conventions.”⁴³ In 1972 the High Commissioner of the UNHCR stated that:

“It is of the utmost importance that Government and, indeed, the whole of the international community should give the problem of statelessness its utmost attention as soon as possible because a stateless person . . . may not be in a position to enjoy any protection from any legal authority either in his country of habitual residence where he is or outside it.”

Also, under Article 28 of the 1954 Stateless Convention, the UNHCR wanted to create standard travel documents for stateless people.⁴⁴ The Nansen Passport was used after World War II and was essentially a legal document that allowed refugees to travel more freely than before. However, the Nansen Passport did not afford refugees the right to return.⁴⁵ The UNHCR wanted to expand and normalize the Nansen Passport-to allow refugees, and stateless persons- to cross borders more freely.⁴⁶

Spiro argues that “states have fiercely resisted ceding discretion over the allocation of nationality.”⁴⁷ States deem the issue of nationality to be a domestic one. States believe that it is within their sovereign power to determine who its nationals are, and that it is not for another

40. *Id.*

41. *Id.*

42. Seet, *supra* note 37.

43. *Id.*

44. *Id.*

45. Milbrandt, *supra* note 2, at 84-85.

46. *Id.* at 85.

47. Spiro, *supra* note 20, at 149.

state-let alone the international community- to speak on issues of nationality.⁴⁸ Yet, the international community is largely in agreement that everyone, regardless of their background, is entitled to a nationality.⁴⁹

The 1961 Stateless Convention gave the UNHCR a supervisory role.⁵⁰ The UNHCR was to “serve as the body to which a person claiming the benefit of [the 1961 Convention] may apply for the examination of his claim and for assistance in presenting it to the appropriate authority under Article 11 of the 1961 Convention.”⁵¹ While the UNHCR pushed for more international concern surrounding stateless persons, the rest of the world’s reactions were largely rejection of the UNHCR’s concern or simply indifferent. A lot of the UNHCR’s donors weren’t interested in addressing statelessness.⁵²

Fortunately, in recent years, following the fiftieth anniversary of the 1961 Stateless Convention, international concern around statelessness is renewed. Statelessness has, and still is, a politically sensitive issue. However, as the refugee crisis has grown, the issue of statelessness has as well, and along with it, international concern.⁵³

Effects of Statelessness

There are numerous ramifications and problems that result from statelessness. Statelessness is linked to “human rights abuses, including a lack of access to . . . identity documentation, education, healthcare . . . political participation and freedom of movement.”⁵⁴ Stateless women are more vulnerable to sex trafficking and prostitution.⁵⁵ Stateless children are more susceptible to becoming victims of child labor.⁵⁶

48. *Id.*

49. *See* Seet, *supra* note 37, at 7.

50. *Id.*

51. *Id.* (This duty was on a provisional basis in 1974; it then became an indefinite duty in 1976).

52. *See* Seet, *supra* note 37.

53. Seet, *supra* note 37.

54. Milbrandt, *supra* note 2, at 92.

55. *Id.* at 93.

56. *Id.*

The United States' Immigration System

The United States prides itself on being the land of immigrants, of being a melting pot, for the ever-illusory American Dream. Yet in recent years, xenophobia is on the rise, and the United States seems to be a country more about exclusion than inclusion.⁵⁷ Citizenship, immigration law, and refugee law are intertwined with one another.⁵⁸ Immigrants are “willing migrants” whereas refugees are “forcibly displaced.”⁵⁹ Immigration law deals with those seeking citizenship, whether temporary or permanent, and entry into the United States, whether one is a documented or undocumented immigrant.

There are two theories of citizenship: *jus soli* and *jus sanguinis*.⁶⁰ *Jus soli* citizenship is “law of the soil.” In other words, anyone born within the territorial boundaries of a state has a right to citizenship in that state.⁶¹ While *Jus sanguinis* citizenship is “law of blood” meaning, citizenship extends to children whose parents are citizens of that country.⁶² *Jus soli* and *jus sanguinis* do not always solve the issue of *de facto* statelessness, because much like the case of Alecia Pennington, when a birth is not registered and one cannot prove what soil one was born on, *jus soli* fails.⁶³ If *jus soli* and *jus sanguinis* sometimes fail to solve *de facto* statelessness, is there another principle that can resolve this issue? The “genuine and effective link” principle looks to use factual ties to establish nationality.⁶⁴

The United States' immigration systems rests on a basic assumption: “someone who does not have authorization to reside in the United States may be sent to another country.”⁶⁵ This is not the case for someone who is stateless, because a stateless person has no country to return to. In terms of statelessness, the United States' immigration system only allows for two viable paths to citizenship for stateless persons: asylum law or refugee law.

57. Julian Lim, *Immigration, Asylum, and Citizenship: A More Holistic Approach*, 101 CALIF. L. REV. 1013, 1014 (2013).

58. *Id.* at 1015.

59. *Id.*

60. Milbrandt, *supra* note 2, at 90.

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.* at 90-91.

65. Baluarte, *supra* note 16, at 361.

Another important international agreement is the 1951 Convention Relating to the Status of Refugees (*hereinafter* 1951 Refugee Convention). While the United States is not a signatory to the 1951 Refugee Convention, it is a signatory to the 1967 Protocol and has subsequently implemented legislation to effectuate key provisions of the Protocol.⁶⁶ The 1951 Refugee Convention “recognizes that while some refugees may not have a nationality, all bona fide asylum seekers are effectively stateless if they cannot return to the country of their nationality.”⁶⁷

According to Article 14 of the UDHR, “Everyone has the right to seek and to enjoy asylum from persecution.”⁶⁸ The issue of statelessness is undoubtedly intertwined with asylum law and refugee law. While the United States increasingly becomes more dependent on immigrant labor, the country’s immigration laws have not changed drastically, or kept up with demand.⁶⁹ Currently, the United States immigration system allows for temporary and permanent immigration to the United States.⁷⁰

Statelessness and The United States

The United States is not a party to either of the two Statelessness Conventions.⁷¹ Officially, the United States’ position on statelessness is that “no one in the country is stateless due to U.S. action or failure to act; all stateless persons here (to the extent they exist, according to the government) owe their status to other nations.”⁷² While many of the people that are stateless in the United States owe their stateless status to other nations, there are those that are stateless that owe their status to the United States, much like Alecia Pennington. Stateless

66. Polly J. Price, *Stateless in the United States: Current Reality and a Future Prediction*, 46 VAND. J. TRANSNAT’L L. 443, 449 (2013).

67. *Id.*

68. Universal Declaration of Human Rights, art. 14.1, G.A. Res. 217(III) A (Dec. 10, 1948).

69. Marisa S. Cianciarulo, *Can’t Live with ‘Em, Can’t Deport ‘Em: Why Recent Immigration Reform Efforts Have Failed*, 13 NEXUS 13, 14 (2007-2008).

70. *Id.* at 15.

71. *See generally*, UNHCR, Convention Relating to the Status of Stateless Persons, Sept. 28, 1954, 360 U.N.T.S. 117. <http://www.unhcr.org/cgi-bin/texis/vtx/search?page=search&docid=3bbb0abc7&query=1954%20convention> (entered into force June 6, 1960)

72. Price, *supra* note 67, at 453.

persons in the United States are “undocumented both from the perspective of U.S. immigration law and with respect to their countries of origin.”⁷³

Statelessness is not a new issue in the United States. Denial of *jus soli* citizenship has its roots in discrimination against Native Americans and persons of Chinese descent.⁷⁴ In recent years, with growing concerns surrounding border security and the United States experiencing its own immigration crisis. With growing numbers of undocumented immigrants, there have been proposals to amend the rules surround birth right citizenship which stems from the principal of *jus soli* citizenship.⁷⁵

Citizenship, “while often fragile in movement, also can be fractured in stasis.”⁷⁶ Price notes that “the notion of citizenship as a human right subject to the domestic choices of nations is admittedly problematic.”⁷⁷ The Dominican Republic, *retroactively* removed birth right citizenship from hundreds of thousands of people within its territorial borders.⁷⁸ Myanmar *refuses* to recognize the Rohingya as an ethnic minority in order for them to be included under the Burma citizenship law.⁷⁹ The idea that in 2017, the United States is even *contemplating* disallowing *jus soli* citizenship is unfathomable to many. *Jus soli* citizenship is largely a tradition of the Western Hemisphere, and yet the United States is not immune from issues of statelessness.⁸⁰ The issue of statelessness is most often associated with countries that have longstanding domestic conflicts, not a nation as prosperous as the United States.

The idea of revoking birthright citizenship is not one that the U.S. is immune to. In the U.S., many politicians have proposed the idea of revoking birthright citizenship to undocumented immigrants.⁸¹ The

73. Price, *supra* note 67, at 444.

74. Jillian Blake, *Haiti, the Dominican Republic, and Race-based Statelessness in the Americas*, 6 GEO. J. L. & MOD. CRITICAL. RACE PERSP. 139, 156 (2014).

75. Price, *supra* note 67, at 445.

76. *Id.* at 454.

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.* at 456.

81. Terry Connelly, “Revoking 14th Amendment Birthright Citizenship: The Ultimate in Voter Suppression,” THE HUFFINGTON POST: THE BLOG (last updated Aug. 27, 2016), http://www.huffingtonpost.com/terry-connelly/revoking-14th-amendment-b_b_8034322.html.

legislative way of revoking birthright citizenship involves “passing a law deeming that any person born in the United States would not be considered ‘subject to the jurisdiction’ of the United States . . . unless at least one of his or her parents was . . . a citizen or legal resident of the United States.”⁸² The idea of revoking birthright citizenship is one that should raise concern for many people. Many of us consider ourselves American, not because our parents are, but because we were born in the U.S., in the land of the free, the home of the brave. Revoking that right to innocent people, because of actions they had nothing to do with, is disheartening and inhumane.

Price notes that “even where civil strife is not a problem, widespread failure to register births poses a significant problem of effective statelessness.”⁸³ For some, the cost of registering a birth is not affordable. More often than not, those that choose not to register a birth do so with the notion, that eventually they will do so, and it’s not until it’s too late that people realize the error of their actions.⁸⁴ In particularly rural areas, maybe not in the United States, but in the Americas for sure, the place where one must go to register a birth is far or the trip is costly, and the obstacles to obtaining documentation are just too great.⁸⁵

Much like Alecia Pennington, in 2011, two sisters from Kentucky brought suit in a federal court, seeking Social Security numbers.⁸⁶ Their births were recorded in a bible but were never registered nor were Social Security numbers issued.⁸⁷ To receive a Social Security number, the Social Security Administration accepts birth certificates, a United States passport, a driver’s license, or a state issued identification card.⁸⁸ Lacking these documents because their births were never recorded, the sisters’ requests for Social Security numbers were initially denied, but after receiving passport cards from the State Department, the sisters were issued Social Security numbers.⁸⁹

82. *Id.*

83. Price, *supra* note 67.

84. *Id.* at 465.

85. *Id.* at 463.

86. *Id.* at 467.

87. Price, *supra* note 67, at 467.

88. Brett Barrouquere, *Sisters settle suit over Social Security cards*, San Diego Union-Tribune, Nov. 23, 2011 (<http://www.sandiegouniontribune.com/sdut-sisters-settle-suit-over-social-security-cards-2011nov23-story.html>).

89. *Id.*

An even more heart-breaking case is Sazar Dent's story. Sazar was adopted by a United States citizen.⁹⁰ Sazar was almost deported to Honduras in 2010, because he was unable to produce his mother's birth certificate, which was necessary to prove his derivative citizenship.⁹¹ An immigration judge ordered Sazar deported, but fortunately, he successfully appealed to the Board of Immigration Appeals, asking for assistance in locating his mother's records in order to prove his citizenship.⁹²

The case of *Haile v. Holder* sheds an incredibly important light on not only citizenship, but asylum claims as well. Temesgen Woldu Haile, was born in Ethiopia to parents of Eritrean descent, but Haile and his parents were Ethiopian citizens.⁹³ At the time of his birth, Ethiopia was ruled by a Soviet-backed dictator. As a result of the fall of the Soviet Union, Eritrea obtained independence from Ethiopia.⁹⁴ Haile's parents then renounced their Ethiopian citizenship in order to obtain Eritrean citizenship, leaving their son behind just as war broke out between Ethiopia and Eritrea.⁹⁵ Haile then fled to Kenya, and eventually sought asylum in the United States, on the basis that Ethiopia's removal of ethnic Eritreans amount to persecution.⁹⁶

A United States Immigration Judge ruled that "other than losing his citizenship Haile had not suffered harm in Ethiopia."⁹⁷ Losing one's citizenship is a significant harm, and yet somehow, that judge, as well as the Board of Immigration Appeals, denied Haile's claim for asylum. The Seventh Circuit court agreed that Haile had failed to submit evidence to show that he was harmed while in Ethiopia and that he was likely to face harm if he were to return.⁹⁸ However, the Seventh Circuit remanded the case back to the Board of Immigration Appeals to further

90. Price, *supra* note 67, at 467.

91. *Id.*

92. *Id.*

93. Maryellen Fullerton, *Comparative Perspectives on Statelessness and Persecution*, 63 KAN. L. REV. 863, 885 (2015). See *Haile v. Holder*, 591 F.3d 572 (7th Cir. 2010).

94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.* at 886 (The Immigration Judge ultimately decided that there was "no evidence that Haile had been arrested, harassed or otherwise targeted for persecution before he left Ethiopia" and that since the war between Ethiopia and Eritrea has ended "Haile, a non-combatant, was not likely to suffer future harm.").

98. *Id.* at 887.

examine Haile's assertion that he has been deprived of his Ethiopian citizenship noting:

“[The immigration judge's] reasoning is problematic—it fails to recognize the fundamental distinction between *denying* someone citizenship and *divesting* someone of citizenship . . . [No] case of which we are aware . . . suggests that a government has the sovereign right to strip citizenship from a class of persons based on their ethnicity. It is arguable that such a program of denationalization and deportation is in fact a particularly acute form of persecution.”⁹⁹

It is one thing to be denied citizenship from a country in which you are born. It is different to enjoy the benefits and pleasures of citizenship, only to have them taken away from you, without your say for a reason so immutable: one's ethnicity. The Seventh Circuit is right: that is an *acute* form of persecution. And yet, the Board of Immigration Appeals once again denied Haile's asylum claim which he appealed to the Seventh Circuit a second time.¹⁰⁰ This time, the court importantly articulated: “if to be made stateless is persecution, as we believe . . . to be deported to the country that made you stateless and continues to consider you stateless is to be subjected to persecution even if the country will allow you to remain and will not bother you. . . .”¹⁰¹ The Seventh Circuit wisely noted, that denial of citizenship *alone*, is persecution in and of itself.¹⁰²

How Can the U.S. Fix its Stateless Problem?

The United States' failure to include stateless persons has created what Baluarte calls a “legal limbo.”¹⁰³ Beluarte also notes that U.S. asylum law is “ill-suited” to solving the issue of statelessness and providing the protections that stateless persons so desperately need.¹⁰⁴

99. *Id.*

100. *Id.*

101. *Id.* at 888.

102. *Id.* at 889.

103. Baluarte, *supra* note 16, at 354.

104. *Id.*

The University of Oxford's Refugee Studies Center proposed twelve recommendations to eliminate and reduce statelessness.¹⁰⁵ The recommendations are as follows:

States should ratify the 1954 and 1961 Conventions on Statelessness and should fulfill the obligations of these instruments including the introduction of necessary domestic legislation to provide procedures to determine status.

States should honour their human rights obligations to all those within the state's territory, irrespective of nationality status.

States should put in place adequate mechanisms to protect people from abuses that particularly affect stateless people, including human trafficking and the use of indefinite detention.

States should develop anti-discriminatory policies and practices, including the training of civil servants, reform of judicial institutions and the creation of a climate that respects the rule of law.

States should ensure that children are provided with the means to acquire a nationality at birth.

States should implement birth registration campaigns in cooperation with UNICEF and Plan International and provide mobile birth registration teams when necessary.

States should facilitate the naturalisation of stateless people, for example by relying on reasonable use of residency and language criteria, and by relaxing the requirements for naturalisation in cases involving stateless persons.

States should improve access to procedures relating to the acquisition, confirmation or documentation of nationality so that those eligible to receive citizenship are not overburdened by fees; where necessary they should provide mobile registration units to ensure greater physical access to public administrative bodies responsible for issuing citizenship certificates.

International donor governments should provide greater assistance to UNCHR to strengthen its work on the prevention and reduction of statelessness.

International donor governments and development agencies should ensure that aid effectively reach stateless groups.

105. Milbrandt, *supra* note 2, at 96-97.

States and international development agencies must improve the monitoring of the status of stateless people through their overseas embassies and in their human rights and country reports.

International funding bodies should support applied research by academics and non-governmental organizations in mapping the relationship between statelessness, poverty and vulnerability and in understanding the mechanisms that have encouraged effective reform.¹⁰⁶

While these recommendations are worthwhile, only four are truly relevant to the United States: Recommendation 1, Recommendation 3, Recommendation 5, and Recommendation 7.

Recommendation 1 is perhaps the most important step: the United States should try to fix the problem of statelessness by signing and ratifying the 1954 Statelessness Convention as well as the 1961 Stateless Convention. However, before this can be done, the United States should change or amend its immigration law, to define statelessness and create a path to citizenship, specifically for stateless persons, aside from an asylum claim or a refugee claim.

Currently, “U.S. immigration law does not explicitly recognize statelessness, nor does it provide for humanitarian protection to relieve stateless persons of their suffering.”¹⁰⁷ In 2013, the United States Senate introduced a proposal to “establish a mechanism for the protection of stateless persons under the Immigration and Nationality Act (INA) as part of . . . SB 744.”¹⁰⁸ If passed, SB 744 has the potential to serve as a comprehensive framework for addressing the issue of statelessness. There is a significant amount of symmetry between the SB 744 Proposal and the Stateless Conventions of 1954 and 1961.¹⁰⁹ The 1961 Stateless Convention establishes a framework for helping to solve the issue of statelessness. The United States could move towards helping stateless persons seek adequate remedies to their current status by implementing this in its domestic immigration policies.¹¹⁰

Recommendation 3 is also important because stateless persons are more vulnerable to human trafficking, particularly, indefinite detention. As Baluarte notes, “the legal limbo to which stateless persons are currently condemned in the United States perpetuates the deleterious

106. *Id.*

107. Baluarte, *supra* note 16, at 352.

108. *Id.*

109. *Id.*

110. *Id.*

effects of human rights violations . . . additionally, detaining persons as if they were removable . . . squanders the resources of an overburdened system of immigration regulation.”¹¹¹ Stateless people are likely to never be deported, because there is no place to deport them to. In removal proceedings, stateless people often spend a lot of time in deportation detention centers, waiting to be released back into the general public: without status.¹¹²

A famous illustration of this is the *Shaughnessy v. United States ex rel. Mezei* case. This case addressed the detention of an alien immigrant, Mezei, on Ellis Island because no country would take him. Mezei was born in Gibraltar and his parents, who immigrated to the United States in 1923, were of either Romanian or Hungarian descent.¹¹³ After being denied entry into Romania, and being stranded in Hungary, Mezei issued a quota immigration visa by the American Counsel in Budapest.¹¹⁴ Upon his arrival in February 1950, he was denied entry by an immigration inspector pursuant to the Passport Act.¹¹⁵ Mezei was detained on Ellis Island pending litigation of his case. However, in May 1950, without a hearing before a board or a special inquiry, the Attorney General made Mezei’s temporary exclusion permanent¹¹⁶

The U.S. tried to deport Mezei twice, to France and Great Britain. Both times, he was returned to the United States.¹¹⁷ Additionally, all of the Latin American countries that Mezei applied to denied him entry. Further, the U.S. was unsuccessful in negotiating his return to Hungary.¹¹⁸ Mezei was stateless: he had no nation to call home and no nation that was willing to offer him a new home.

It is long recognized that States have the power to “expel of exclude aliens as a fundamental sovereign attribute,” but the detainment of Mezei, a stateless person, was excessive and unjust.¹¹⁹ Unfortunately, the United States Supreme Court determined that Mezei’s “continued exclusion [did not deprive] him of any statutory or

111. *Id.* at 354.

112. *Id.* at 364.

113. *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 208 (1953).

114. *Id.*

115. *Id.*

116. *Id.* (The reason behind making his exclusion permanent was that it would have been “prejudicial to the public interest for security reasons” to admit him.).

117. *Id.* at 209.

118. *Id.*

119. *Id.* at 210.

constitutional right. Heartbreakingly, the Supreme Court concluded that “an alien in [Mezei’s] position is no more ours than theirs.”¹²⁰ Ellis Island became Mezei’s home for almost four years until the Eisenhower Administration released him in 1954, as they were closing down Ellis Island.¹²¹

Mezei’s case is one that we should never forget. Much like Mezei, many stateless persons in the U.S. are vulnerable to the same fate. The U.S. government could grab them up, throw them in detention, and engage in a game of musical chairs to see which country, if any at all, would take them. Ultimately when the music stops, there usually is never a chair for the stateless to sit in.

Recommendation 5 is important because of the principle of *jus soli* citizenship. Children have no control over the situations in which they are born. To deny innocent children access to basic human rights is simply unacceptable. Citizenship, and all that comes with it, is “the key to the door of basic human rights, such as education, health care, employment, and equality.”¹²²

Alecia Pennington could not apply to college. She could not apply for a driver’s license, or even a state identification card. She could not rent an apartment. She could not vote. Despite being born to parents who are U.S. citizens, she had no access to her basic human rights simply because she was not recognized a citizen under U.S. law.¹²³ Alecia’s story fortunately has a happy ending. However, many stateless children and adults like her are still waiting for their happy endings.

Recommendation 7 is potentially the most difficult option. It is easy to say, “define statelessness, sign a treaty, protect children, protect against discrimination.” It is much more difficult to adequately define and create a path for the stateless to naturalize. If it were easy, countries would have done it a long time ago, politically sensitive subject or not. It is also difficult because states view nationality and citizenship as strictly sovereign issues, and who is one state to interfere in the domestic affairs of another.

But while nationality and citizenship are indeed domestically sovereign issues, there are international human rights treaties which

120. *Id.* at 215.

121. Richard A. Serrano, “Detained, Without Details,” LOS ANGELES TIMES (Nov. 1, 2003).

122. Milbrandt, *supra* note 28, at 710.

123. *The Girl Who Doesn’t Exist*, RADIOLAB (Aug. 29, 2016), <http://www.radiolab.org/story/invisible-girl/>.

guarantee everyone the right to nationality and citizenship to a state, and those international obligations must be complied with, regardless of the belief that citizenship and nationality are domestically sovereign issues.¹²⁴ Ideally, a stateless person would be able to apply for citizenship to a process similar to that of a refugee, hopefully with much higher approval rates.¹²⁵

Currently, statelessness is not that much of a problem for the United States. Sure, there are cases of statelessness, but statelessness does not plague the United States the same way it does other countries.¹²⁶ Statelessness could however become a much bigger issue and could mirror the stateless situations in Hispaniola and Myanmar.

The situations in Hispaniola and Myanmar started because of “other-ing” rhetoric: meaning, one group of people was pointed out as being the “other,” as being different from what the majority in power was trying to control.¹²⁷ As a result, entire groups of people became stateless because of their racial and ethnic backgrounds, as well as their religion.¹²⁸ Looking at and analyzing these two situations can shed light on a path that the United States does not, and should not, go down.

The Situation in Hispaniola

The island of Hispaniola is home to the countries of Haiti and the Dominican Republic.¹²⁹ Although the two countries share the same island, they are very different from one another. For example, the Dominican Republic is a popular tourist destination. Haiti, comparably, is in a perpetual state of economic and social despair. Ethnic tensions between the two nations date back hundreds of years.¹³⁰

Race has played a crucial role in the construction of national identity.¹³¹ Rafael Trujillo was the dictator of the Dominican Republic 1930-1961.¹³² The Parsley Massacre of 1937 occurred under Trujillo’s rule, plaguing the relationship between Haiti and the Dominican

124. See Blake, *supra* note 74, at 153, 153-54 n. 129

125. Baluarte, *supra* note 16, at 373.

126. *Id.* at 360.

127. See discussions *infra* Sections V, VI.

128. See *infra* text accompanying notes 166-170.

129. Blake, *supra* note 75, at 140.

130. *Id.*

131. *Id.*

132. *Id.* at 144.

Republic ever since.¹³³ Under Trujillo, anti-black sentiment became entrenched into Dominican society. The word negro was both an insult and became synonymous with Haitians.¹³⁴ Overall, the relationship between Haiti and the Dominican Republic is complex.

Despite being a ruthless dictator, Trujillo nationalized the sugar industry in the Dominican Republic.¹³⁵ A nationalized sugar industry meant an immediate need for labor. Trujillo accomplished this by signing an agreement in 1952 allowing Haitian citizens to work in the Dominican Republic within the sugar industry.¹³⁶ Trujillo continued these agreements with Francois “Papa Doc” Duvalier during his time as a Haitian dictator.¹³⁷ As a result, the Dominican Republic’s economy flourished, while Haiti’s economy struggled (and continues to struggle).¹³⁸

Race relations in the Dominican Republic have not improved since the Parsley Massacre. A 2007 United Nations Special Rapporteur stated:

“[T]here is a profound and entrenched problem of racism and discrimination in Dominican society, generally affecting blacks and particularly such groups as Black Dominicans, Dominicans of Haitian descent and Haitians . . . The issue of racism is almost invisible in certain parts of society and in particular among elites who vehemently deny the possibility of the existence of such a phenomenon.”¹³⁹

The UN Special Rapporteur noted that, “while government representatives rejected even the possibility of racism in Dominican society, members of the community ‘all spoke emotionally of the reality of racism that they had experienced.’”¹⁴⁰ How can the Dominican Republic remedy the plight of its people when its government refuses to

133. *Id.* at 136. (The Parsley Massacre was essentially an act of genocide committed under Trujillo’s rule. Soldiers asked people to pronounce the word parsley, in Spanish it is perejil, and if they had a Haitian accent, the soldiers would kill them).

134. *Id.* at 144.

135. Blake, *supra* note 75, at 150.

136. *Id.* at 150.

137. *Id.* at 144-45.

138. *Id.* at 145.

139. *Id.* at 150.

140. *UN experts find ‘profound and entrenched’ racial bias in Dominican Republic*, UN News Centre (Oct. 30, 2007), <http://www.un.org/apps/news/story.asp?NewsID=24468>.

acknowledge that there are racial and ethnic tensions. According to Doudou Diene, “the struggle against racism must be closely linked to building a multi-cultural society based on the principles of democracy, justice, equality and human rights for all.”¹⁴¹

The problem of statelessness that the Dominican Republic has faced is a problem that is “uniquely American” for a number of reasons.¹⁴² The Dominican Republic’s problem with statelessness is uniquely American because, in the Dominican Republic and Haiti, there is a legacy of slavery and racial persecution, the principle of *jus soli*, a lot of Haitian migrants and refugees have settled throughout the Americas, multiple inter-American legal instruments discuss racial discrimination, nationality, and statelessness, and the Inter-American Court of Human Rights has condemned the Dominican Republic’s discriminatory practices and citizenship laws.¹⁴³

The 1929 Dominican Constitution grants automatic *jus soli* citizenship to anyone born within the territory of the Dominican Republic.¹⁴⁴ However in September of 2013, the Dominican Constitutional Court upheld an amendment to the Dominican Constitution that will revoke citizenship to anyone born to undocumented immigrants in the Dominican Republic.¹⁴⁵ The law was challenged by Juliana Deguis Pierre, who was born in the Dominican Republic to Haitian immigrants.¹⁴⁶

Pierre’s birth certificate was confiscated because her name sounded Haitian, and Pierre was denied a national identification card, as well as a voter card.¹⁴⁷ Ultimately the Dominican Constitutional Court determined that Pierre was not a Dominican citizen and emphasized that the Dominican Republic has a “sovereign right to determine its own nationality laws.”¹⁴⁸ The 2007 UN Special Rapporteur also

141. *Id.*

142. Blake, *supra* note 75, at 141.

143. *Id.* at 141-42.

144. *Id.* at 148 (one of the few exceptions to this was anyone born to persons “in transit” or children of diplomats).

145. *Id.* at 140-41.

146. *Id.*

147. Blake, *supra* note 75, at 151.

148. *Id.* (The Court found that Pierre’s parents were “foreigners in transit” under the 1966 Dominican Constitution and were therefore “non-immigrant foreigners” who only become immigrants when they obtain legal residence, which would then allow for their children to enjoy *jus soli* citizenship. However, Pierre’s parents never obtained legal residence, therefore, Pierre is not entitled to enjoy *jus soli* citizenship).

noted that the migration law “presented problems of conflict with the Dominican Constitution, retroactivity, and discriminatory application.”¹⁴⁹ This has left thousands of people stateless in the Dominican Republic. This amendment to the Dominican Constitution however, is not the only cause of statelessness for many people in the Dominican Republic.

Traditionally, nationality laws are seen as the exclusive right of the sovereign state. However, the Inter-American Court of Human Rights determined that “while a sovereign state does have the right to determine its immigration laws and nationality policies, it much do so within the parameters of its international obligations and respect for human rights.”¹⁵⁰ The Dominican Republic is party to numerous international agreements that are relevant to this issues of nationality and statelessness including: The Convention relating to the Status of Stateless Persons (*hereinafter* 1954 Stateless Convention), The Convention on the Reduction of Statelessness (*hereinafter* 1961 Stateless Convention), The Convention on the Elimination of All Forms of Racial Discrimination (*hereinafter* CERD), and the International Covenant on Civil and Political Rights (*hereinafter* ICCPR).¹⁵¹

CERD defines racial discrimination as:

“Any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, or human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”¹⁵²

The Dominican Republic’s migration law, which is overwhelmingly discriminatory against Haitians, those of Haitian descent, and those that appear to be Haitian, is clearly a violation of all of the Dominican Republic’s international obligations under human rights law.

149. *Id.*

150. *Id.* at 153.

151. *Id.* at 159.

152. International Convention on the Elimination of All Forms of Racial Discrimination G. A. Res. 2106 (XX), art. 1.1 (Dec. 21, 1965) [*hereinafter* CERD].

The Situation in Burma (Myanmar)

Similar to the situation in the Dominican Republic, Myanmar faces a significant problem with statelessness. While the issue of statelessness in the Dominican Republic is largely a result of racial tensions, religious and ethnic tensions are the driving force behind Myanmar's stateless crisis.¹⁵³ In particular, Rohingya Muslims have been denied citizenship in Myanmar.¹⁵⁴ The Rohingya are both a religious and an ethnic minority. Unfortunately, almost everywhere the Rohingya seek safety, they are denied.¹⁵⁵

The Rohingya attempt to seek refuge in one country only to be sent away and told to try another country.¹⁵⁶ Countries in South East Asia have basically been playing a cruel human game of musical chairs with the Rohingya, because when the music stops, there is never a place for them. Without a place to call home, the Rohingya simply exist without belonging. Hundreds of Rohingya died in 2015 attempting to cross the Bay of Bengal to escape persecution and desperation in Myanmar.¹⁵⁷ Amnesty International identifies the Rohingya as one of the world's most persecuted minority group.¹⁵⁸

A 1982 citizenship law excludes large numbers of minorities from obtaining citizenship. In pertinent part, article 3 recognizes "nationals such as the Kachin, Kayah, Karen, Chin, Burman, Mon, Rakhine or Shan and ethnic groups as have settled in any of these territories included within the State as their permanent home from a period anterior to 1185 B.E., 1823 A.D. [as] Burma citizens."¹⁵⁹ Article 4 then states that "[t]he council of State may decide whether any ethnic group is national or not."¹⁶⁰ Myanmar has refused to recognize the Rohingya Muslims as an ethnic group that is a national of Myanmar.¹⁶¹

153. See, Amnesty International, *Who are the Rohingya Refugees?*, January 4, 2016, <https://www.amnesty.org.au/who-are-the-rohingya-refugees/>.

154. *Id.*

155. *Id.*

156. *Id.*

157. *Id.*

158. *Id.*

159. Burma Citizenship Law, art. 3, Oct. 15, 1982, <http://www.refworld.org/docid/3ae6b4f71b.html>.

160. *Id.*

161. See Amnesty International, *Who are the Rohingya Refugees?*, January 4, 2016, <https://www.amnesty.org.au/who-are-the-rohingya-refugees/>.

161. *Id.*

The Rohingya are native born, but are not indigenous people.¹⁶² In the 1960s, the military government of Myanmar dissolved large numbers of Rohingya social and political organizations, and a 1974 Emergency Immigration Act stripped the Rohingya of their Burmese nationality.¹⁶³ Thus, under the 1982 citizenship law, the Rohingya are classified as “foreign residents” and “non-nationals,” and they do not fall into citizenship category as defined in the 1982 citizenship law.¹⁶⁴ Following the 1982 citizenship law, in 1989, color-coded Citizen Scrutiny Cards (CRCs) were issued: pink for full citizens, blue for associate citizens, and green for naturalized citizens.¹⁶⁵ Ultimately, in response to large amounts of international pressure, including from the UNHCR, Myanmar issued white Temporary Registration cards, in order to document the Rohingya.¹⁶⁶ Interestingly, while Myanmar fails to recognize the Rohingya as its own nationals, it objects to the Rohingya being classified as stateless.¹⁶⁷

The Rohingya are discriminated against on a number of fronts. The Rohingya are essentially confined to their village tracts. In order for them to travel, even to a neighboring village, they must pay for a travel pass.¹⁶⁸ In addition to needing travel passes to move about freely, in the late 1990s, the Burmese government issued a requirement, exclusively applicable to the Muslim population, to obtain marriage authorizations.¹⁶⁹ The Rohingya are also denied government employment in health and education. Even in emergency situations, the Rohingya must obtain travel permission to reach severely underfunded, under equipped, and under staffed hospitals.¹⁷⁰ Furthermore, many of the officials in the schools do not speak the native Rohingya language, posing a significant barrier to learning.

162. The International Observatory on Statelessness, Burma/Myanmar, <http://www.nationalityforall.org/burma-myanmar>.

163. *Id.*

164. *Id.*

165. Chris Lewa, “North Arakan: an open prison for the Rohingya in Burma,” FMR31 p. 11, <http://www.fmreview.org/sites/fmr/files/FMRdownloads/en/FMRpdfs/FMR32/FMR32.pdf>.

166. *Id.*

167. *Id.* at 12.

168. *Id.*

169. *Id.*

170. *Id.*

In 2007, UN Special Rapporteurs made recommendations that would help resolve the Rohingya situation in Myanmar.¹⁷¹ The main recommendation, and perhaps most obvious solution, calls for the 1982 Citizenship Law to be repealed or amended to include the Rohingya, and to allow for Myanmar to be in compliance with its various obligations under human rights law.¹⁷² Any discriminatory practices within Myanmar against the Rohingya need to be eliminated as well. A Rohingya villager stated, “[we], Rohingyas, are like birds in a cage. However, caged birds are fed while we have to struggle alone to feed ourselves.”¹⁷³ This situation will not change overnight. However, with international attention focused on the situation in Myanmar and international attention to the issue of statelessness, accountability for state actions can be had.

Conclusion

Statelessness is caused by governments, therefore it ought to be fixed by governments.¹⁷⁴ While recommendations are needed and necessary, the only way to truly fix the issue of statelessness is to get people to care. In the United States, statelessness has not garnered political attention because it’s not common in the United States, and many would argue that there are more important issues. But as human beings, violations of basic human rights is an issue that should always garner significant political attention. Just because the issue of statelessness is not as severe as the situations in Hispaniola and Myanmar, does not mean that it could not one day be as severe if the U.S. doesn’t wake up and pay attention.

The stateless have lived in the shadows of the immigration system for far too long. Stateless people may only make up “tenths, hundredths, and thousandths of a percent of the population of the counties in which they reside,” but that does not make them any less human. Statelessness is not a new issue: it dates back decades.¹⁷⁵ It is high time we start caring and fighting for those that need our help. There are campaigns like the #IBELONG campaign, dedicated to drawing attention to the issue of statelessness.¹⁷⁶ Individuals and government entities

171. *Id.* at 13.

172. *Id.*

173. *Id.*

174. *See* Milbrandt, *supra* note 2, at 695.

175. *Id.* at 721.

176. Baluarte, *supra* note 16, at 389.

need to wake up and recognize that statelessness is problem deserving of a resolution.